IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.7986 OF 2005.

In the matter of C.R.No.27 of 2005, G.B.C.B.CID, EOW, Mumbai, for offence under Section 465, 468, 471, 420, 409, 120(b) of I.P.C. registered on 21.3.2005.

Milind Desai ..Applicant/ Accused

versus

State of Maharashtra ..Respondent

Mr.N.V.Pradhan with Ms. Manisha Panth for Applicant/accused.

APP Shri Pednekar with Shri S.Shinde for the State.

Investigating Officer Shri R.I.Patel

Advocate Shri Desai for ICICI Bank.

Coram : S.R.Sathe, J.
Dated : 16th March, 2006

ORAL ORDER

1. The Applicant accused who is charge-sheeted for the offence punishable under Section 465, 468, 471, 420, 409 and 120(b) of I.P.C. along with three other accused and whose earlier application for bail has been rejected by the Court of Sessions, Mumbai, has filed this application under Section 437 of the Code of Criminal Procedure.

2. Brief facts giving rise to this application are as under :

. One Shridhar Shriram Iyengar, the accused No.2 in the present case opened current account on 10.11.2004, in the ICICI Bank, D.N.Road, Fort Branch as proprietor of Suriyaa International. He showed his business as of software development and export of iron. As per the procedure of the said bank the business customer who is having an account with the said bank can avail the Bill Discounting Facility. The seller submits the bills or hundies for discounting to the said bank and the bank then sends the same to the bankers of the buyers for acceptance on receiving of the documents. Accordingly, on 11.11.2004 said Iyengar submitted two bills of the amount of Rs.5.62 crores. Those bills were accepted by Fortune Systems i.e. sole proprietary concern of the present applicant accused and the said bills were co-accepted by the bankers of Fortune Systems i.e. Dena Bank, Thakurdwar Branch. When complainant ICICI Bank received those CD accepted bills and the complainant bank got confirmation of co-acceptance from Dena Bank, the complainant bank

credited amount of Rs.5.62 crores to Suriyaa International. Thereafter, upto 3rd March 2005, the complainant ICICI Bank received 27 more bills for discounting from Suriyaa International drawn on Fortune Systems and accepted by them and co-accepted by Dena Bank, Thakurdwar Branch. The complainant bank discounted the said bills by the above procedure. The total amount of the said 27 bills was Rs.36,65,75,000/-. In order to gain confidence the first two bills were properly accepted and discounted.

3. On 15.3.2005 the complainant bank received the communication from Global Trade Service Unit, Lower Parel that one Hundi/bill presented for payment to Dena Bank was dishonoured by Dena Bank, Thakurdwar Branch on the ground that they have not accepted it. Thereafter, on 17.3.2005 the plaintiff bank received letter from Dena Bank, Thakurdwar Branch stating that the signatures of the Officers co-accepting the bills are forged and the code numbers mentioned below the signature do not belong to any official from Dena Bank. The reference numbers are also bogus and imaginary. The round rubber stamp and the Bank Manager’s stamp do not

belong to their branch and thus it is clear that the complainant ICICI Bank was as defrauded to the tune of Rs.36,65,75,000/-. As a result of this, one V.S.Raghunathan, Officer from the complainant bank lodged complaint with Cuffe Parade Police Station .

4. On the basis of the said complaint police registered the crime for the offences mentioned above at C.R.No.88 of 2005. The said FIR was then transferred to Economic Offences Cell, Criminal Branch, CID, Mumbai and it was registered there as C.R.No.27 of 2005 and investigation started. During the course of investigation it was revealed that the accused Kamalaksha Pudubhidri, present applicant/accused Milind Desai, one Shridhar Iyengar and others hatched a criminal conspiracy to raise funds by taking Bill Discounting Facility from the bank by producing false/bogus sale bills and without doing any actual delivery of materials. When police started search for applicant accused, he filed application for Anticipatory bail. However, the same was rejected by the Sessions Court and High Court and the said order was confirmed in the Supreme Court.

5. On 21.3.2005 the applicant/accused was arrested for the offences mentioned above. Thereafter he filed Criminal Application No.1480 of 2005 for bail. In the meantime the complainant ICICI Bank initiated proceedings against the applicant accused and other accused as well as against Dena Bank for recovery of the amount of the said 27 bills. During the course of hearing of the said Bail Application submission was made on behalf of the applicant/accused that he would pay the amount to complainant bank if he is released on bail. With a view to give opportunity to the applicant/accused to show his bonafides in repayment of the amount, the Sessions Court, Mumbai granted provisional bail to the applicant and directed him to surrender before the Court on or before 3.10.2005.

6. It was also revealed that the amount of Rs.9.93 crores was siphoned from the account of Suriyaa International to various firms which were shown as proprietary concerns of the applicant/accused. On perusal of the record it appears that after passing of the above mentioned order some amounts were recovered from the applicant

as well as his blood relations i.e. wife and children.

7. After provisional bail was granted, the applicant/accused underwent Open Heart Surgery on 10.10.2005. Thereafter applicant moved the Court for grant of permanent bail instead of provisional bail. The said application was strongly opposed by the State on the ground that there was sufficient prima face material to connect the applicant/accused with the alleged crime and if the applicant is released on bail he would abscond and bring pressure on the witnesses.

8. After hearing the arguments of both the sides, on 2.12.2005 the learned Sessions Judge rejected the application and directed that Non-bailable warrant issued earlier be sent.

9. Being aggrieved by the above mentioned order the applicant/accused filed the present application in this Court and the same was placed for hearing on 12.12.2005. During the course of argument it was submitted on behalf of the applicant accused that he is willing to pay the balance amount of

Rs.7,00,000/- if an opportunity is given to him. As the applicant was on that day taking rest after heart surgery, it was submitted that the effect and operation of the Non-bailable warrant be stayed. After hearing the other side, this Court (Coram: S.C.Dharmadhikari, J.) adjourned the matter till 20.12.2005 and extended the time to Applicant to surrender before the Regular Court till then. Thereafter the matter was adjourned for one reason or the other and the time granted on 12.,12.2005 and thereafter on 20.12.2005 was extended from time to time.

10. I have heard both the learned Advocates. Shri Pradhan, learned Advocate for the Applicant/accused submitted that charge-sheet is filed against the accused. All the offences are triable by a Magistrate. The case is mainly of Civil nature and based on documents. The due date of subsequent 27 bills was not even over when the applicant/accused was arrested. There is nothing on record to show that the applicant/accused handled the bills in question or brought the co-acceptance from the Dena bank. So, there is even no prima facie material to connect him with the offence of

forgery. He also submitted that the amount of Rs.9.93 crores has been recovered from the applicant and his relatives. During the period when provisional bail was granted, the applicant never misused it. He has already undergone open heart surgery. He, therefore submitted that considering these facts accused be released on bail. As against this, the learned APP submitted that there is prima facie material to connect the accused with the alleged crime and that the applicant and the other accused persons hatched criminal conspiracy to defraud the complainant bank. This is a very serious economic offence. Crores of rupees have been siphoned from the bank through the account of Shridhar Iyengar. If the accused is released on bail, he would abscond and is likely to bring pressure on the witnesses. He, therefore, submitted that the application be rejected.

11. It is needless to say that while considering the bail application under Section 437 of Cr.P.C. the court has to take into consideration several factors such as nature and gravity of the offence, the manner in which the offence is committed, possibility of the accused to flee from justice,

possibility of the accused bringing pressure on the witnesses and possibility of the accused trying to commit such type of offence again. It is also well settled that at this stage the court need not scrutinize the entire evidence minutely. All that is necessary is to find out whether there is prima facie case made out by the prosecution to show the involvement of the accused in the alleged offence.

12. From the statement of the complainant, V.N.Raghunathan, the Bank Officer from ICICI Bank, Fort, Mumbai and the documents produced by him, it is very clear that the co-accused Shridhar Iyengar opened current account in ICICI Bank, D.N.Road, Fort branch on 10.11.2004 and immediately thereafter on the next day he submitted two bills of the value of Rs.5.62 crores for discounting. These bills were accepted by Fortune Systems which is admittedly a sole proprietary concern of the applicant accused. It is also evident from the material on record that few months prior to this date the applicant/accused had opened his account with Dena Bank, Thakurdwar branch, and the bills in question were co-accepted by the said Dena Bank, Thakurdwar branch. As a result of the same, the complainant ICICI Bank

credited the said amount to the account of Suriyaa International of Shridhar Iyengar. It appears that these bills were properly accepted and discounted with a view to create confidence. It is not in dispute that subsequently on 3.3.2005 the complainant bank received from Suriyaa International other 27 bills of the value of Rs.36,65,75,000/-. From the statement of the Bank Officer as well as from the documents produced it is very clear that on 15.3.2005 the complainant bank received intimation from Global Trade Services that Dena Bank, Thakurdwar branch has dishonoured the bills and not accepted it and subsequently they have also issued letter informing that the signatures appearing on the bills about co-acceptance by the bank are forged. The reference numbers are bogus and imaginary. The code number of the signatures do not belong to any of the officers from Dena Bank. Even the round rubber stamp appearing on the bills is not of Dena Bank. It is true that those bills were not actually taken by the applicant/accused. Atleast at this stage there is no material before me to hold that accused took the bills to bank. However, the question arises whether that by itself is sufficient to hold that the applicant/accused is not at all

concerned with the manipulation, forgery and fraud that has taken place.

13. It is the case of the prosecution that the entire transaction between Shridhar Iyengar i.e. Suriyaa International and Fortune Systems and other firms of which the applicant/accused is the sole proprietor is false and bogus. Only paper work was done without there being any delivery of goods. In order to substantiate its case the prosecution at this stage is relying on the statement of some other persons and the search that was carried out during investigation. Admittedly, the applicant had given the address of Fortune Systems as 80, Vaibhav Industrial Estate, behind Telecom Factory, Deonar. From the evidence of Premlaksha Pedubhidri it is very clear that this above mentioned premises was never given to the applicant accused. On the contrary, from the statement of the said person it appears that the same is standing in the name of M/s. Sai Fashions Private Limited. It is pertinent to note that the applicant/accused has filed an affidavit in reply wherein he has stated that he had given the above address only for the purpose of correspondence and he never used to sit at the said

premises. However, he has not at all stated that the owner of the said premises or any other person in possession of the said premises had infact permitted him to give such address. So, this itself shows the ill intention of the applicant accused. The Investigating Officer has filed affidavit wherein he has categorically stated that when the premises of Suriyaa International as well as the above mentioned premises were searched, no CD's or any other material that is required for production of CD's etc was found at the said place. It is really very strange to find that it is shown in the invoices that the applicant/accused purchased few master CD's for crores of rupees. The said CD's have been described as Development of Software for Fashion Studio Designing for easy colouring, knits and embroidered Studio etc. One really does not know as to whether there are any such CD's and the value of the same is running into crores. In fact, during investigation police did not find any such CD's or other material. I am really at a loss to know as to what is the exact procedure of the bank in granting bill discounting facility to any customer or while giving any co-acceptance of bill and for rendering such facilities to the customers,

whether the banks are in fact required to ascertain the real nature of the business of the customer and to find out by actually visiting to the business premises and perusing the accounts etc, as to whether the customer is in fact dealing in a business which requires such huge amount. Unfortunately, in the instant case there is nothing on record to indicate that any such steps have been taken by the Bank Officers and they had ascertained the 'Net Worth' of the applicant/accused. This is obviously because some of the Bank Officers had joined hands with the applicant/accused and other persons in order to cause wrongful gain to themselves and loss to the bank.

14. It is pertinent to note that during investigation police could not get any books of accounts or any documents etc showing the volume of the business of Suriyaa International and/or Fortune Systems. So, when it appears that all the alleged transactions between Suriyaa International and Fortune Systems are bogus, fictitious and imaginery, there is no need to have any other material to show the involvement of the applicant/accused in the alleged offences.

15. It is an admitted fact that when acceptenace from applicant/accused and co-acceptance from Dena Bank was received by the complainant bank they credited the amount to account of Shridhar Iyengar. There is sufficient material on record which apparently shows that out of the said amounts Rs.9.93 crores have already been siphoned to the account of the applicant-accused or his wife and children or in the account of the various firms of which accused is the sole proprietor. The question arises if really the applicant-accused had purchased anything from Suriyaa International, then he would have given money for the same to Suriyaa International directly. There was no necessity for Shridhar Iyengar to siphon the said money to applicants account in the above manner. If we see the affidavit in reply filed by the applicant-accused we find that he has not at all stated anything about the real nature or transaction which was being carried out in his concern namely Fortune Systems. He has said that he received money for the services rendered to Suriyaa International. However, he has not at all stated as to what sort of services were rendered for which he received crores

of rupees. I am fully conscious of the fact that in a criminal case, there is no burden on the accused and it is for the prosecution to prove the entire case beyond reasonable doubt. But, when applicant chooses to file on record some affidavit in reply it is necessary to scrutinize the same and see whether there is any substance in it which may remotely show that the applicant is an innocent person. Looking to the applicant's affidavit from that view, I have no hesitation to hold that the affidavit in reply does not support the contention of the accused in any way, on the contrary, it shows that the transaction entered into by the applicant was not genuine. Incidently, it must be noted that the copy of the Income Tax Return of the applicant shows that his annual income is only Rs.1,40,358/- in the year 2002/2003. The subsequent returns have not been filed and on the contrary it is shown that he secured certificate from Income Tax Department to show that his another firm namely Anandita Pharmaceuticals Private Limited went into losses. So, under such circumstances, merely because the due date of the other bills was not over, it would not make any difference because since inception of all the transaction there appears to be conspiracy

between applicant accused and other persons including some of the officers from the concerned banks.

16. Much is made about the fact that about 9.93 crores have already been recovered from the applicant accused. However, in my view it has absolutely no importance. The question is whether with a view to defraud the bank, the applicant/accused and others entered into any conspiracy and accordingly they took various steps and ultimately siphoned crores of Rupees from the bank through the account of Shridhar Iyengar and thereby secured wrongful gain or tried to secure wrongful gain to themselves. Subsequent repayment of the amount received br fraud, cheating would not cure the earlier offence or action committed by the accused. Infact, in such type of cases we often find that once the offence is detected then the accused is ready to deposit the misappropriated amount or the amount received by fraud. But in my opinion that can’t change the fate of the case if it appears that initially the offence has infact been committed, as already pointed out by me above. At this stage I have to consider whether there is prima

facie material against the applicant accused and In my opinion there is sufficient material which prima facie connect the applicant with the alleged crime.

16. It is an admitted fact that during the course of investigation some of the documents have been sent to handwriting expert. The learned APP has produced the handwriting Expert's opinion dated 6.3.2006. From the perusal of the said opinion, as it is, one can't form any specific opinion as to whether there is any prima facie material against the applicant/accused to show that he has actually forged any particular signature or rubber stamp. However, as mentioned above, this point is not so relevant if it prima facie appears that the applicant with hand in glove with some of the bank Officers managed to have co-acceptance from the Dena Bank and thereafter siphoned money from the account of Shridhar Iyengar. So, even if at this stage it is held that so far as Handwriting Expert's opinion is concerned, it is not in favour of the prosecution, still the other factors which are mentioned above clearly prima facie indicate that the applicant/accused is involved in the offence in question.

18. Shri Pradhan, the learned Advocate for the accused submitted that the offences in question are triable by Magistrate and there is no possibility of completing the hearing of the case within few years and as such the applicant be released on bail. For this proposition he has drawn my attention to one Criminal Application decided by this Court (Coram:R.S.Mohite, J.) on 12.11.2004. I have carefully gone through the said order. The facts of the said case and the facts of the case in hand are quite different. In that case charge against the applicant was for the offences punishable under Section 3,7,8 and 10 of the Essential Commodities Act. The allegation was that from some lorries blue kerosene was converted into white kerosene. However, the applicants in the said case were only drivers of the said lorries and they were not the owners of lorries. So, under such circumstances bail was granted to them. While in the instant case there is prima facie material to show that the applicant is involved in a very serious economic offence in which bank has been defrauded for crores of rupees. So the above stated case is of no use to the applicant/accused. The learned Sessions Judge

has already given direction to the lower Court to expedite the trial. So, there is no reason to release the accused on bail at this stage by saying that trial may take long time.

19. Shri Pradhan, learned Advocate for the accused strenuously argued before me that when the provisional bail was granted to applicant/accused, he has not misused the said bail, so now when chargesheet is also filed he can be released on bail. It must be noted that merely because previously applicant had not misused the provisional bail, it does not mean that he is entitled for bail. In fact, if we take into consideration the entire conduct of the applicant accused right from the day when complaint was lodged, it would definitely indicate that at every stage he tried to avoid his arrest. Not only that, but even from the order that has been finally passed by the Sessions Court on 2.12.2005 it is very clear that the Court was even required to issue Non-bailable warrant against the accused on 22.11.2005. Not only that, but it must be noted that even on the day when the said order was passed, the accused remained absent. What is more annoying is that though Non-bailable warrant

was issued and directed to be sent on that day still till 12.12.2005 the same could not be executed as accused was not traced. What does this show? It only indicates that the apprehension of the prosecution that accused may abscond is reasonable and based on previous circumstances and events.

20. The learned Advocate for the applicant submitted that few months back the applicant has undergone heart surgery and as such he be released on bail. It is needless to say that after successful heart surgery and after lapse of few months one can live normal life. At present there is absolutely nothing on record to show that it is necessary to release him on medical ground. So, merely because few months back he has undergone heart surgery, I am not inclined to release him on bail on that ground.

21. From the facts and circumstances of the case, it is very clear that taking advantage of some knowledge with regard to marketing etc, accused influenced some of the Bank Officers and other and succeded in getting them involved in his plan. So, he is in habit of influencing the people by one way

or the other and to make them work for his unlawful gain. So, if such person is released on bail in such a grave, serious offence which has far reaching consequences and which ultimately amounts to loss to public money and damage to National Economy there is every likelihood that he will interfere with the witnesses for the prosecution or otherwise try to pollute the process of justice. The previous conduct of the applicant prima facie indicates that he has propensity to abscond and to bring pressure on others to achieve his oblique motive. There is reasonable apprehension that the Courts of justice would be thwarted by the applicant. So, I do not think that the facts and circumstances of this case warrant release of the accused on bail.

22. In this view of the matter the application is rejected. The accused to surrender to police forthwith.

(S.R.Sathe, J.)